IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 8537 OF 2006

Chetan Anand Shetty & Ors..... Petitioners.

Versus

Indrajeet Chadnrasen Shirole & Ors.... Respondents.

Mr. S.S.Kanitkar i/by Mr. G.S.Godbole
for the Petitioners.
Mr. R.M.Pethe for the Respondents.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

Heard Mr. S. S. Kanitkar, learned Counsel for the petitioners and Mr. R. M. Pethe, learned Counsel appears for the respondents.

2. Civil Suit No. 861 of 1999 which was filed for seeking decree of eviction on the ground of bonafide requirements came to be allowed by the learned Judge, Small Causes Court at Pune. By the judgment and order passed by the learned trial Judge on 20th January, 2006 the suit was decreed and the defendants were directed to handover vacant and peaceful possession of the suit premises to the plaintiffs on or before 20th

March, 2006. Aggrieved by the said judgment and order, the defendants filed Civil Appeal No. 187 of 2006 which came to be dismissed by the learned 9th Adhoc Additional District Judge at Pune, vide his judgment and order dated 30th November, 2006.

3. In this writ petition the judgment and order passed by the lower appellate court confirming the judgment and order passed by the learned trial Court under the Bombay Rent Act is challenged. In Writ Petition No. 4138 of 2006, I have already taken a view vide order dated 24th August, 2006 that such decree can be challenged by filing a civil revision application under Section 115 of the Code of Civil Procedure. I have further observed that when such a statutory remedy is available, a writ petition under Article 227 of the Constitution of India need not be entertained.

4. Hence, the writ petition is disposed of as such with liberty to the petitioners to file a civil revision application and if such a civil revision application is filed within a period of four weeks from today, the period of pendency of this writ petition be taken into consideration for condonation of delay, if any.

5. The statement made by the learned Advocate for the respondents and recorded in the order of this Court dated 22nd December, 2006, will continue to operate for a period of two weeks more from today.

6. Annexures to the petition memo be returned, if applied for.

7. Writ petition is disposed of, accordingly.

Sd/-

(B. H. MARLAPALLE, J.)